1994 S.H. No. 1201-48771

IN THE SUPREME COURT OF NOVA SCOTIA
(IN CHAMBERS)
Cite as: Browning v. Browning, 1999 NSSC 84

BETWEEN:

MANON L. BROWNING

PETITIONER

- and -

ROBERT W. BROWNING

RESPONDENT

D E C I S I O N

HEARD BEFORE: The Honourable Justice Walter R. E. Goodfellow in the Supreme Court of Nova Scotia (Chambers) on May 17 and 21, 1999

DECISION: May 25, 1999

PRESENT: Robert W. Browning - Applicant/Respondent/Self Represented

Manon L. Browning - Petitioner/Respondent/Self Represented

GOODFELLOW, J.:

1. BACKGROUND

Robert W. Browning, now 42, and Manon L. Browning, now 41, were married July 19th, 1981, separated August 17th, 1993 and divorced the 13th of May, 1996.

Mr. Browning filed this application the 25th of March, 1999 seeking to terminate or reduce spousal maintenance and in response Ms. Browning asked for an increase in spousal support and takes exception to Mr. Browning's sale of his present residence and acquisition of an alternative residence.

2. PREVIOUS COURT ORDERS

The parties separated August 17th, 1993 and have had enumerable attendances at court and the file indicates the following Orders:

1. Order of the then Chief Justice Glube, September, 1994 for the payment of interim spousal and child support in the amount of $2,900.00 per month as opposed to the amount claimed by Ms. Browning resulting in an award of costs against Ms. Browning of $250.00.

2. Order of the Family Court Judge Paul S. Niedermayer for garnishee obtained by Ms. Browning the 3rd of January, 1996 as Mr. Browning may have been $7.00 in arrears in December, 1995. Mr. Browning's position is that he in fact had overpaid his support obligation at that time. This Order was addressed by His Honour Judge Williams of the Family Court and he granted an Order discharging the garnishee the 24th of January, 1996 and a subsequent Order against Ms. Browning for the payment of $100.00 costs to Mr. Browning.

3. Order of Justice David Gruchy addressing access and sale of matrimonial home and ordering Ms. Browning to co-operate with the real estate agents. Order issued 15th November, 1995.

4. Corollary Relief and Divorce Judgments issued the 13th of May, 1996. Unfortunately, this Order did not recite the income position of the parties, but it spelled out access specifics and contained a specific provision for spousal support at the rate of $500.00 per month commencing the 1st of July, 1996 and child support of $1,500.00 per month commencing the same date.

5. Order, Justice Davison, setting date for contempt proceedings against Ms. Browning 11th July, 1996. This contempt proceeding does not appear to have been proceeded with.

6. Order Justice Suzanne M. Hood, September 9th, 1996 ordering Ms. Browning return certain fixtures she removed from the matrimonial home and awarding costs against Ms. Browning in the amount of $200.00.

7. The Corollary Relief Judgment. The Corollary Relief Judgment contained specific directions on a number of matters including, for example, that Ms. Browning was to leave all fixtures with the home and her failure to do so presumably resulted in the subsequent Order by Justice Hood. The most significant provisions for the purposes of this application are as follows:

The Separation Agreement and Minutes of Settlement is dated the 9th of May, 1996 and it is incorporated in the Corollary Relief Judgment, including the following provisions, paragraphs 6, 11 to 15 inclusive.

AGREEMENT AND INTENTION

6. In consideration of the promises and conditions contained in the Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

(a) This Agreement binds the parties according to its terms, even if any provision is beyond the power of a Court to order;

(b) This Agreement is a full and final settlement between the parties and may be pleaded as a complete defence to any action bought by either party to assert a claim in respect of **any matter dealt with by this Agreement**, except where this Agreement expressly provides for review or variation of a particular term or condition.

CHILD AND SPOUSAL SUPPORT

11. The Husband shall pay for the support and maintenance of the children of the marriage the sum of $1,500.00 per month beginning on the 1st day of July, 1996, and continuing on the 1st day of each month thereafter until further order of a court of competent jurisdiction.

12. The Husband shall pay for the support and maintenance of the wife the sum of $500.00 per month beginning on the first day of July, 1996, and continuing on the first day of each month thereafter until April 1, 1998 at which time support for the wife shall be reviewed with a view to terminating spousal support.

13. The wife acknowledges her obligation to become self-sufficient recognizing her physical limitations, if any, and she agrees to make diligent and reasonable efforts in this regard. The wife shall immediately make reasonable efforts to find employment, based on her physical limitations, and shall notify the husband when such employment is obtained and to provide the husband with details of her earnings from employment. The wife shall provide to the husband on September 1, January 31 and May 31 of each year proof of all her efforts to find employment, such provision of information to commence May, 1996.

14. The Husband will provide post-dated cheques three months in advance of year end.

15. The Husband agrees to pay the retroactive tax in the amount of $1,002.88 plus interest to the date of payment directly to the Wife on or before September 30, 1996. The Wife will then be responsible to pay Revenue Canada any amounts owing to them at that time.

Both parties had experienced family law practitioners as noted by their respective certificates of independent legal advice.

3. DIVORCE ACT

Variation, Rescission or Suspension of Orders

Order for variation, rescission or suspension

17.(1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,

(a) a support order or any provision thereof on application by either or both former spouses; or

(b) a custody order or any provision thereof on application by either or both former spouses or by any other person.

Application by other person

(2) A person, other than a former spouse, may not make an application under paragraph (1)(b) without leave of the court.

Terms and conditions

(3) The court may include in a variation order any provision that under this Act could have been included in the order in respect of which the variation order is sought.

Factors for child support order

(4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.

Factors for spousal support order

(4.1) Before the court makes a variation order in respect of a spousal support order, the court shall satisfy itself that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order, and, in making the variation order, the court shall take that change into consideration.

Factors for custody order

(5) Before the court makes a variation order in respect of a custody order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of the child of the marriage occurring since the making of the custody order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the court shall take into consideration only the best interests of the child as determined by reference to that change.

Conduct

(6) In making a variation order, the court shall not take into consideration any conduct that under this Act could not have been considered in making the order in respect of which the variation order is sought.

Guidelines apply

(6.1) A court making a variation order in respect of a child support order shall do so in accordance with the applicable guidelines.

Objectives of variation order varying spousal support order

(7) A variation order varying a spousal support order should

(a) recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;

(b) apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) relieve any economic hardship of the former spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.

4. APPROACH TO VARIATION APPLICATION - GENERAL

1. The Order is assumed current and appropriate for the circumstances that existed at the time it was issued.

2. The onus is on the person seeking variation to in the words of s.17(4.1):

> "To satisfy the court that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order."

The change must of course be of sufficient significance to warrant an alternation in the existing order."

3. If the Order sought to be varied is based upon consent and is detailed and finalized in a Separation Agreement/Minutes of Settlement, the projection of the parties intention on the issue of variation/recission of spousal support insofar as it is ascertainable from the written consensus should absent fraud, oppressive misconduct,

vital non-disclosure, etcetera, be given its due consideration and weight. **Durocher v. Durocher** (1992), 106 N.S.R. (2d) 215.

4. The courts determination is based upon **change** and generally the evidence to be adduced in support of an Application to Vary should be limited to the changed circumstances of the parties subsequent to the latest Order of the court. The cross-examination is not limited to recent events, if reference to earlier acts are necessary to establish as precisely as possible foundations of the existing Order or whether there is any disagreement of substance of such between the parties. **Wesson v. Wesson** (1973), 10 R.F.L. 193.

5. All the relevant circumstances that existed at the time of making the Order sought to be varied should as a first step be identified and noted and evidence adduced to show the degree of change in each circumstance; i.e., employment then and now, income then and now, assets/debts then and now, third party obligations particularly related to other children then and now. Third party benefits since; i.e., co-habitation partner, inheritance, etcetera, and advancement in employment since by promotion, job change, remuneration and benefit changes, etcetera, etcetera.

6. Specific note should be taken of any direction given by the court, either through the incorporation of a Separation Agreement/Minutes of Settlement, or in the Court's Decision and Order with respect to such matters as retraining, employment seeking efforts, disclosure requirements, etcetera. No exhaustive list can be advanced and it will depend upon circumstances in relation to whatever direction existed at the time the Order sought to be varied was granted.

7. Whatever changes have been established must then be weighed in determining the present condition, means, needs or other circumstances of the spouses and in particular the spouse facing possible termination of support in the context of the objectives at the time of making the Order sought to be varied which objectives remain

and the court must determine the progress towards satisfaction of those objectives by virtue of the changes that have taken place or ought to have taken place.

5. CHANGES

The changes since the granting of the Corollary Relief Judgment the 13th of May, 1996 include:

1. **Self-represented -**

Both parties can no longer afford the cost of legal services and are self-represented.

2. **Employment - Mr. Browning -**

Mr. Browning's Statement of Financial Information filed February 22nd, 1996 shows his employment at A.I.T. Services Inc. and that employment terminated in November, 1998 with a continuation of his salary for a period of approximately five months thereafter. His Statement of Financial Information showed a monthly income of $4,833.00 which is an annualized rate of $57,996.00. His 1994 income was $73,482.90. Mr. Browning's Statement of Financial Information filed May 11th, 1999 referred to his employment at A.I.T. Services at the same rate of pay.

Mr. Browning has changed his employment. I accept his evidence that he did not take a transfer to Montreal in order to remain close to his children. He has accepted employment with MT&T as a Marketing Manager with a starting date of February 10th, 1999 and a starting salary of $57,000.00 with an opportunity to share in a corporate team reward which has a target of 7.5 per cent of his base salary for the year 1999.

Mr. Browning says his income has been reduced from $70,000.00 to $57,000.00 a year. Ms. Browning calculates his rate of annual income for several months where there is an overlap from his former employer and his new employment at an annualized rate of approximately $80,000.00 per annum and that is approximate. I

conclude that Mr. Browning probably paid greater than his capacity when he paid $2,900.00 per month and paid somewhat less than he ought to for the months where his annualized income was $80,000.00 and on balance, make no adjustment. Under cross-examination by Ms. Browning, he accepted that at the time of setting the existing levels of maintenance, his income was taken to be at approximately $58,000.00 per annum and I in fact conclude that starting with his employment with MT&T, February, 1999 his income will be at approximately $60,000.00 per annum level, a change of approximately $2,000.00 greater per annum.

3. **Third Party - Ms. Hebert -**

Mr. Browning has had a relationship with a Ms. Hebert and they commenced co-habitation on July 1, 1996. This was a clearly foreseen and essentially an existing situation at the time the parties entered into the Separation Agreement the 9th of May, 1996. Ms. Hebert, in response to a notice from Ms. Browning, filed a Statement of Financial Information indicating a monthly income of $2,833.00 plus a commission which is not guaranteed of $666.00, a total of $3,499.00, an annualized rate of $31,988.00. In addition, Ms. Hebert has a car allowance of $645.00 a month and her transportation expenses, which appear to be in order, run approximately $743.00 a month which includes a loan and lease payment of $510.00 per month.

The evidence establishes that Ms. Hebert contributes $636.00 per month which is effectively the balance of her disposable income after attending to her own needs and this is towards shelter.

4. **Sale of Home-Acquisition of Alternate by Mr. Browning -**

Mr. Browning has entered into an Agreement of Sale with respect to his present home. It was listed originally for $189,000.00 and has sold for $178,000.00 with a mortgage outstanding of approximately $145,000.00 and also a line of credit to be paid out of the proceeds. He has entered into an Agreement of Purchase and Sale for a new home at a purchase price of $159,000.00. It seems to me that addressing debt and moving into a less expensive accommodation is an appropriate course for Mr.

Browning and I will give no support to Ms. Browning's contention that this is an inappropriate course.

5. **Ms. Browning - Acquisition of Home -**

Ms. Browning purchased a home June, 1998 held in joint-tenancy with her brother Jean P. Roy of Alberta. The home is situate at 27 Georgian Court, Dartmouth, Nova Scotia, B2W 6E7. The purchase price was apparently $106,000.00 and the mortgage outstanding is approximately $97,785.00 but this is, of course, post Ms. Browning's discharge from bankruptcy.

6. **Ms. Browning - Employment - Income -**

Ms. Browning continues to assert difficulties with her back which she says occurred in an altercation with Mr. Browning on the date of their separation where she alleges he threw her against the coffee table and went to Bryony House as a refuge. Mr. Browning has a different recollection of the events of that evening. I will comment further on the material filed by Ms. Browning in support of her allegation with respect to a sore back and its stated interference with employment. Suffice to note for the moment that the Separation Agreement would have been entered into by her long after the event and the Separation Agreement expresses a clear intent as to her obligation with respect to self-sufficiency.

Ms. Browning entered personal bankruptcy and there is filed a post-bankruptcy Income Tax return for 1997 which indicates employment income of $1,200.00 and the trustees 1997 return indicating employment income of $1,500.00. Ms. Browning filed a Statement of Financial Information April 12th, 1996 which showed a monthly wage of $233.00 plus U.I.C. which she takes to have been Child Tax Credit of $143.70 and the then maintenance of $2,900.00 per month. The annualized rate of her income, exclusive of maintenance, was at the time of the granting of the Corollary Relief Judgment and entry into the Agreement and Minutes of Settlement, $4,520.40. There is an unsworn Statement of Financial Information of Ms. Browning the 13th of April, 1999 showing income of $1,477.56 per month and child tax credit of $55.95, a total of $1,533.51 which has an annualized rate of $18,402.12. Ms. Browning's evidence is

that she job shares with another teacher and although the application has been filed for a continuation of the job sharing, no confirmation for the school year commencing September, 1999 has yet been received. I make the assumption that she will in fact have the job sharing opportunity and that her income will be approximately $18,400.00 for the foreseeable year. Ms. Browning has turned down some opportunities for substitute teaching claiming an inability to do so because of her back difficulty.

Ms. Browning, in the Separation Agreement/.Minutes of Settlement acknowledged her obligation to become self-sufficient and in para. 12 targeted for a review as early as April 1st, 1998, twenty-three months after the divorce was granted and it went on to place an obligation on her to file at specific times proof of her efforts to find employment. The material filed with the court is rather sparse and does not indicate, in my conclusion, a reasonable effort both in respect to the number of attempts to seek employment, but also in the rather limiting aspect of the limited attempts made by Ms. Browning.

6. **Children's Education Fund - continues - no change -**

Mr. Browning agreed to pay the sum of $101.00 per month into an educational fund for the children and he continues to do so and acknowledges his continuing obligation in that regard.

5. MEDICAL CONDITION - MS. BROWNING

Ms. Browning has filed medical records and, as previously noted, there is a difference of opinion as to what actually transpired on the night of their separation. The medical records include a report from Doctor D. Stewart, Ms. Browning's longtime family doctor and his report of April 18th, 1996 arose at the request of Ms. Browning's then solicitor. Doctor Stewart saw Ms. Browning at the Dartmouth General Hospital on the 17th of August, 1993 and had her version of what had transpired. Chest and rib x-rays were taken and were negative. She was given Atasol 30 and sent home.

The next day she saw an associate of Doctor Stewart's and was very distressed and then disclosed her view that her husband had thrown her against the coffee table. Doctor Stewart noted that Ms. Browning had previously been referred to the Dartmouth Mental Health Centre for management of anxiety and stress stemming from her marital situation which was recognized as being in trouble, prior to the incident as related.

Ms. Browning had physiotherapy and as is prevalent throughout the reports, there is a recital of what Ms. Browning says and given that pain is subjective, this is to a substantial degree quite understandable. She went to physiotherapy for the first time September 2nd, 1993 and on September 28th the physiotherapists suggested her complaints were improved and that she was able to do activity as tolerated and was placed on a home exercise program.

Doctor Stewart saw her for the first time October 9th, 1993 and there is a series of attendances. She would complain with respect to activities of shoveling, standing, etcetera, and she said her pain comes and goes. There was no attendance by her between June 23rd, 1994 and 1st of November, 1994 where a work hardening program was suggested but was not pursued and she was in March of 1995 sent again to the Dartmouth Mental Health Centre where was diagnosed with a post-traumatic stress disorder stemming from trauma both in childhood and in her marriage.

There is a report from another doctor the 7th of October, 1995 saying she is suffering from a backache. There is no need to review all of the attendances and complaints by her but it is noteworthy that **she herself acknowledged her symptoms increased with periods of stress, for example, court dates**. Although Doctor Stewart accepted what was being told to him by Ms. Browning, he did note that she was able at times to participate in aerobics, skiing, etcetera, and he believed there were times when she can work full-time and that he hoped that this would be more and more often.

There is a physiotherapist report of April 3rd, 1996 which recites that at the time of her discharge September 28th, 1993 Ms. Browning did not report any complaints.

Ms. Browning reported having minimal difficulties with her activities of daily living and was increasing her activities as tolerated. Her range of motion was within normal limits. Ms. Browning received, apparently at her request, another letter April 25th, 1996 that the Clinic acknowledged Ms. Browning had complained of low back symptoms. This letter does note, however, that the major focus of treatment was on developing a home exercise program and on pain control for her **neck** symptoms. There was a tentative appointment set up for October but there is no indication whether that was ever kept. Ms. Browning filed a wealth of material and I do not see any up-to-date medical legal opinion and it is very clear that Ms. Browning has not seen anyone else other than a chiropractor. She has not seen a psychiatrist related to her back situation nor a physioatrist, orthopedic surgeon, or neurologist, If one were assessing damages based on the information advanced by her, the amount of damages would be minimal at best.

Conclusion

Activities such as aerobics and skiing plus her ability to work regularly in a job-sharing and the nature of her employment as a teacher allowing some flexibility, combined with my observation of her in the courtroom, lead me to the view that Doctor Stewart's projection ought to have been met by now.

From my observation of Ms. Browning, she appears very clearly to be utilizing the event of August 17th, 1993 as a crutch, as a lever to attack her husband and to justify her continual efforts to try and establish that he is unreasonable, an abuser, etcetera. Ms. Browning does no good to herself or their children by maintaining that status and I would strongly urge that her intelligence of which she is possessed in good measure prevail so that she may have a higher quality of living by becoming self-reliant and sufficient. The medical evidence advanced falls far short of justifying failure to seek and take full-time employment. She has job-shared as a teacher for the past year and whatever limited difficulties she may have can clearly be handled in the nature of her employment as a teacher.

Ms. Browning indicates that she was involved in a motor vehicle accident on approximately the 5th of June, 1998 and the only advice the court can give is to urge her to seek counsel.

6. CHILD SUPPORT

Ms. Browning advised the court that there was agreement the existing child support regime would continue as apparently with her income at approximately $17,000.00/$18,000.00 per annum, the net available to her at the rate of $1,500.00 per month provides a greater net amount than would resort to the Child Support Guidelines. I note with interest the unofficial Child Support Guidelines would have placed the child support at $1,427.00 per month.

In argument, Ms. Browning has changed her mind and asks for imposition of the Child Support Guidelines so that the child support would not be taxable in her hands and Mr. Browning is under the impression that its continuation is beneficial to the children. I will order a continuation of the existing child support payments of $1,500.00 per month and Ms. Browning is to reflect on the mathematics if, in fact, as suspected, there is a financial benefit, then presumably the parents will adopt that which is most beneficial for the children. Undoubtedly, as Ms. Browning's income increases, the situation will alter. In any event, if either party persists, the court will grant, with reluctance, an Order fixing child support in accordance with the Child Support Guidelines.

7. SPOUSAL SUPPORT

One of the most difficult decisions to be made in family law is when and in what circumstances should spousal support be rescinded.

This is often a more difficult decision to make than the initial determination of entitlement. **Dorey v. Dorey** (1998), 172 N.S.R. (2d) 75 where after four years of periodic payments, entitlement was determined as a lump sum to provide an

opportunity for retraining towards employment. In **Young v. Young**, S.H. No. 1201-48745, the 18th of February, 1999, not yet reported, where the length of time the spouses co-habited was assessed not in isolation but in the circumstances where Mrs. Young remained at home sixteen and a half years, looked after the children, and in all the circumstances a dependency grew and continued to exist resulting in a spousal support entitlement with no termination date.

We now have the assistance of the Supreme Court of Canada in **Bracklow v. Bracklow**, [1999] S.C.J. No. 14, March 25th, 1999. While the issue was what duty does a healthy spouse owe a sick one when the marriage collapses? McLachlin, J. said at p. 8:

> "In analysing the respective obligations of husbands and wives, it is critical to distinguish between the roles of the spouses during marriage and the different roles that are assumed upon marriage breakdown."

McLachlin, J. goes on to deal with the "basic social obligation" model in which the primary responsibility falls on the former spouse to provide for his or her ex partner, rather than on the government, and at the other end of the spectrum, "the independent" model where the parties regard themselves in an enterprise they can terminate on the unilateral action of either party.

McLachlin, J. went on to state at p. 9, para. 25:

> "The independent, clean-break model of marriage provides the theoretical basis for compensatory spousal support. The basic social obligation model equally undergirds what may be called "non-compensatory" support. Both models of marriage and their corresponding theories of spousal support permit individual variation by contract, and hence provide a third basis for a legal entitlement of support."

McLachlin, J. went on to state, p. 11:

> "Both the mutual obligation model and the independent, clean-break model represent important realities and address significant policy concerns and social values. The federal and provincial legislatures, through their respective statutes, have acknowledged both models. Neither theory alone is capable of achieving a just law of spousal support. The importance of the policy objectives served by both models is beyond dispute. It is critical to recognize and encourage the self-sufficiency and independence of each spouse. It is equally vital to recognize that divorced people may move on to other relationships and acquire new obligations which they may not be able to meet if they are obliged to maintain full financial burdens from previous relationships. On the other hand, it is also important to recognize that sometimes the goals of actual independent are impeded by patterns of marital dependence, that too often self-sufficiency at the time of marriage termination is an impossible aspiration, and that marriage is an economic partnership that is built upon a premise (albeit rebuttable) of mutual support. The real question in such cases is whether the state should automatically bear the costs of these realities, or whether the family, including former spouses, should be asked to contribute to the need, means permitting. Some suggest it would be better if the state automatically picked up the costs of such cases: Rogerson, "Judicial Interpretation of the Spousal and Child Support Provisions of the Divorce Act, 1985 (Part I)", supra, at p. 234, n. 172. However, as will be seen, Parliament and the legislatures have decreed otherwise by requiring courts to consider not only compensatory factors, but the "needs" and "means" of the parties. It is not a question of either one model or the other. **It is rather a matter of applying the relevant factors and striking the balance that best achieves justice in the particular case before the court.** (Emphasis added)

In the final result, the court confirmed the entitlement of Mrs. Bracklow to spousal support but directed the determination of the quantum of the support to the trial judge. Her only comment in that regard is at p. 18:

> "My only comment on the issue is to reiterate that all the relevant statutory factors, including the length of the marital relationship and the relative independence of the parties throughout that marital relationship, must be considered, together with the amount of support Mr. Bracklow has

> already paid to Mrs. Bracklow. I therefore do not exclude the possibility that no further support will be required, i.e., that Mr. Bracklow's contributions to date have discharged the just and appropriate quantum. Absent settlement between the parties, these issues are for the trial judge to resolve."

The onus is upon Mr. Browning to establish that there has been a sufficient change in the condition, means, needs and circumstances to warrant either a termination immediately or the imposition of a termination date for the spousal support. I do not think it is appropriate to terminate spousal maintenance immediately, however, a summary of the changes indicates to me that it is appropriate to introduce a termination date. The court should not be as reluctant as it has of recent date to utilize the capacity to introduce terms and conditions, including the introduction of a termination date, where after applying the relevant factors and striking the balance that best achieves justice in a particular case, mandates such a course.

As was noted by Chouinard, J. in **Messier v. Delage** (1983), 35 R.F.L. (2d) 337, at p. 348:

> "In my opinion, what is significant about this subsection is that an order is never final. It may be varied from time to time or rescinded if the court thinks it fit and just to do so, taking these factors into consideration."

Ms. Browning has not lived up to her obligation to make all and reasonable efforts to obtain self-sufficiency. This, and a number of other factors, differentiates this case very clearly from the factual situation in **Messier v. Delage**. The court should not shy away from giving strong direction where it is just and reasonable to do so and the invoking of a time limited period for the continuation of spousal support does not preclude an Application to Vary during that time period and then there is the safety valve of s.17(10).

Ms. Browning has been in receipt of spousal support since the separation August 17th, 1993, a period approaching six years and she was only 35 years of age at the time of separation. She holds a Bachelor of Arts and a Bachelor of Education degree and did not remove herself entirely from the work force during the period of their co-habitation. In fact, under the terms of their Separation Agreement and Minutes of Settlement, they have divided their respective pension benefits throughout co-habitation.

Ms. Browning, while she suffered some degree of economic disadvantage due to the breakdown of the marriage, it was not as severe as in many cases because as indicated in the material filed by Ms. Browning, she did throughout the marriage participate, at least to a limited degree, within her profession and never totally severed herself for any length of time from teaching. It is not a case of having given up one's profession or career completely but a case, as can be drawn from the parties intention, a period of time would be required for Ms. Browning to get up to speed and become self-sufficient.

Ms. Browning was at the time of entry into the Separation Agreement and Minutes of Settlement earning $4,520.40 per annum and last year had income of $18,402.12 which combined with the $24,000.00 annual maintenance, gave her an annualized rate of $42,724.40, bearing in mind $18,000.00 was for child support. The child support payments will continue and I am predicating my determination on Ms. Browning securing at least the job-sharing teaching arrangement to give her a minimal additional $17,000.00 for the year commencing August, 1999. She has the opportunity for additional substitute teaching and from my observation of her, she has clearly chosen to work less than full-time and unless motivated and directed by the court, she will not seek any additional employment.

The Separation Agreement and Minutes of Settlement contain a clear indication of the intent of the parties and the direction they intended is clearly one of Ms. Browning becoming self-sufficient. Indeed, the time was set for a review to take place after April 1st, 1999 with a view to terminating the spousal support. Additionally, she was to file

proof of **all** her efforts to find employment and while she has provided some indication of efforts, they are inadequate and far too limiting entirely by her own choice.

She continues to utilize the crutch of what she has reported to her family doctor and chiropractor as a bad back as a rationale for not taking additional employment and in fact, turning down opportunities for substitute teaching.

Mr. Browning's income has increased by approximately $2,000.00 per annum over the base used to determine the existing spousal support and Ms. Browning has had a substantial increase in her income since the Corollary Relief Judgment.

Ms. Browning, through the substitute teaching, is again contributing, albeit in a relatively small measure, to her long term security through pension deduction.

In summary, working forward from the statement of intent of the parties contained in their Separation Agreement and Minutes of Settlement and following the considerations set out in **Bracklow**, I conclude spousal support should be terminated in twenty-four months and should be at the rate of $500.00 per month from the 1st of June to and inclusive to the 1st of December, 1999, period of seven months, and then commencing the 1st of January, 2000 at the rate of $400.00 per month for a period of seventeen months when spousal support shall terminate.

It will be open to Ms. Browning to apply within that time frame for an extension based upon her entitlement to apply for variation. I would, however, indicate to her she would have the onus of establishing it was fit and just to continue spousal support beyond the termination date because of circumstances beyond her control. In other words, that she has done everything reasonable that could be expected of her.

As previously indicated, the child support shall continue at the rate of $1,500.00 per month, the continuation of the existing tax deductible tax inclusive order.

While I will not make it a term of the Order, Ms. Browning should cease and desist contact with Mr. Browning's employer.

All terms and conditions of the Separation Agreement and Minutes of Settlement incorporated in the Corollary Relief Judgment that are not specifically addressed in the decision and Order to follow shall continue.

9. COSTS

In the circumstances, each party will bear their own costs of this application.

10. ORDER

In view of the fact that the parties are self-represented, the court will prepare, have issued, and provide each party with a certified copy of the Order flowing from this decision.

J.